

Senate File 534

S-3345

1 Amend Senate File 534 as follows:

2 1. By striking everything after the enacting clause  
3 and inserting:

4 <Section 1. FINDINGS. The general assembly finds  
5 all of the following:

6 1. Abortion can cause serious short-term and  
7 long-term physical and psychological complications for  
8 women including but not limited to uterine perforation,  
9 uterine scarring, cervical perforation or other  
10 injury, infection, bleeding, hemorrhage, blood clots,  
11 failure to actually terminate the pregnancy, incomplete  
12 abortion or retained tissue, pelvic inflammatory  
13 disease, endometritis, missed ectopic pregnancy,  
14 cardiac arrest, respiratory arrest, renal failure,  
15 metabolic disorder, shock, embolism, coma, placenta  
16 previa in subsequent pregnancies, preterm delivery in  
17 subsequent pregnancies, free fluid in the abdomen,  
18 organ damage, adverse reactions to anesthesia and other  
19 drugs, and psychological or emotional complications  
20 such as depression, anxiety, sleeping disorders, and  
21 death.

22 2. Abortion has a higher medical risk when the  
23 procedure is performed later in the pregnancy.  
24 Compared to an abortion at eight weeks' gestation or  
25 earlier, the relative risk increases exponentially  
26 at higher gestations. The incidence of major  
27 complications is highest after twenty weeks of  
28 gestation.

29 3. The state has a legitimate concern for the  
30 public's health and safety.

31 4. The state has a legitimate interest from the  
32 outset of pregnancy in protecting the health of the  
33 woman. More specifically, the state has a legitimate  
34 concern with the health of women who undergo abortions.

35 5. There is substantial evidence that by at least  
36 twenty weeks after fertilization, an unborn child has  
37 the physical structures necessary to experience pain.

38 6. There is substantial evidence that by twenty  
39 weeks after fertilization, an unborn child seeks to  
40 evade certain stimuli in a manner which, in an infant  
41 or an adult, would be interpreted as a response to  
42 pain.

43 7. Anesthesia is routinely administered to an  
44 unborn child twenty weeks or more after fertilization  
45 when the unborn child undergoes prenatal surgery.

46 8. Even before twenty weeks after fertilization,  
47 the unborn child has been observed to exhibit hormonal  
48 stress responses to painful stimuli, and a reduction  
49 in such response results when pain medication is  
50 administered directly to the unborn child.

1 9. It is the purpose of the state of Iowa to assert  
2 a compelling state interest in protecting the unborn  
3 child from the stage at which substantial medical  
4 evidence indicates the unborn child is capable of  
5 feeling pain.

6 Sec. 2. NEW SECTION. 146A.1 Definitions.

7 As used in this chapter, unless the context  
8 otherwise requires:

9 1. "Abortion" means abortion as defined in section  
10 146.1.

11 2. "Attempt to perform or induce an abortion" means  
12 an act, or an omission of a statutorily required act,  
13 that, under the circumstances as the actor believes  
14 them to be, constitutes a substantial step in a course  
15 of conduct planned to culminate in the performance or  
16 inducing of an abortion.

17 3. "Department" means the department of public  
18 health.

19 4. "Fertilization" means the fusion of a human  
20 spermatozoon with a human ovum.

21 5. "Medical emergency" means a condition which, in  
22 reasonable medical judgment, so complicates the medical  
23 condition of a pregnant woman as to necessitate the  
24 termination of the human pregnancy to avert the woman's  
25 death or to avoid a serious risk of substantial and  
26 irreversible physical impairment of a major bodily  
27 function. "Medical emergency" does not include a  
28 condition which is based on a claim or diagnosis that  
29 the pregnant woman will engage in conduct which would  
30 result in the pregnant woman's death or in substantial  
31 and irreversible physical impairment of a major bodily  
32 function.

33 6. "Medical facility" means any public or private  
34 hospital, clinic, center, medical school, medical  
35 training institution, health care facility, physician's  
36 office, infirmary, dispensary, ambulatory surgical  
37 center, or other institution or location where medical  
38 care is provided to any person.

39 7. "Physician" means a person licensed under  
40 chapter 148.

41 8. "Postfertilization age" means the age of the  
42 unborn child as calculated from the fertilization of  
43 the human ovum.

44 9. "Probable postfertilization age" means what,  
45 in reasonable medical judgment, will with reasonable  
46 probability be the postfertilization age of the unborn  
47 child at the time an abortion is to be performed.

48 10. "Reasonable medical judgment" means a medical  
49 judgment made by a reasonably prudent physician who  
50 is knowledgeable about the case and the treatment

1 possibilities with respect to the medical conditions  
2 involved.

3 11. "*Unborn child*" means an individual organism of  
4 the species homo sapiens from fertilization until live  
5 birth.

6 Sec. 3. NEW SECTION. 146A.2 Determination of  
7 postfertilization age prior to abortion — abortion  
8 prohibited at twenty or more weeks postfertilization age  
9 — exceptions — reporting requirements — penalties.

10 1. Except in the case of a medical emergency,  
11 an abortion shall not be performed or induced or  
12 be attempted to be performed or induced unless  
13 the physician performing or inducing the abortion  
14 has first made a determination of the probable  
15 postfertilization age of the unborn child or relied  
16 upon such a determination made by another physician.  
17 In making such a determination, a physician shall make  
18 such inquiries of the pregnant woman and perform or  
19 cause to be performed such medical examinations and  
20 tests the physician considers necessary in making a  
21 reasonable medical judgment to accurately determine the  
22 postfertilization age of the unborn child.

23 2. a. A physician shall not perform or induce  
24 or attempt to perform or induce an abortion upon a  
25 pregnant woman when it has been determined, by the  
26 physician performing or inducing the abortion or  
27 by another physician upon whose determination that  
28 physician relies, that the probable postfertilization  
29 age of the unborn child is twenty or more weeks unless,  
30 in the physician's reasonable medical judgment, any of  
31 the following applies:

32 (1) The pregnant woman has a condition which the  
33 physician deems a medical emergency.

34 (2) It is necessary to preserve the life of an  
35 unborn child.

36 b. An abortion performed or induced under this  
37 subsection shall be performed or induced in a medical  
38 facility that provides the appropriate level of  
39 perinatal care as specified in 641 IAC 150.

40 3. A physician who performs or induces or attempts  
41 to perform or induce an abortion shall report to  
42 the department, on a schedule and in accordance with  
43 forms and rules adopted by the department, all of the  
44 following:

45 a. If a determination of probable postfertilization  
46 age of the unborn child was made, the probable  
47 postfertilization age determined and the method and  
48 basis of the determination.

49 b. If a determination of probable postfertilization  
50 age of the unborn child was not made, the basis of the

1 determination that a medical emergency existed.

2 c. If the probable postfertilization age of the  
3 unborn child was determined to be twenty or more weeks,  
4 the basis of the determination of a medical emergency,  
5 or the basis of the determination that the abortion was  
6 necessary to preserve the life of an unborn child.

7 d. The method used for the abortion and, in the  
8 case of an abortion performed when the probable  
9 postfertilization age was determined to be twenty or  
10 more weeks, whether the method of abortion used was one  
11 that, in the physician's reasonable medical judgment,  
12 provided the best opportunity for the unborn child to  
13 survive or, if such a method was not used, the basis  
14 of the determination that termination of the human  
15 pregnancy in that manner would pose a greater risk than  
16 would any other available method of the death of the  
17 pregnant woman or of the substantial and irreversible  
18 physical impairment of a major bodily function.

19 4. a. By June 30, annually, the department shall  
20 issue a public report providing statistics for the  
21 previous calendar year, compiled from the reports for  
22 that year submitted in accordance with subsection  
23 3. The department shall ensure that none of the  
24 information included in the public reports could  
25 reasonably lead to the identification of any woman upon  
26 whom an abortion was performed.

27 b. (1) A physician who fails to submit a report by  
28 the end of thirty days following the due date shall be  
29 subject to a late fee of five hundred dollars for each  
30 additional thirty-day period or portion of a thirty-day  
31 period the report is overdue.

32 (2) A physician required to report in accordance  
33 with subsection 3 who has not submitted a report or who  
34 has submitted only an incomplete report more than one  
35 year following the due date, may, in an action brought  
36 in the manner in which actions are brought to enforce  
37 chapter 148, be directed by a court of competent  
38 jurisdiction to submit a complete report within a time  
39 period stated by court order or be subject to contempt  
40 of court.

41 (3) A physician who intentionally or recklessly  
42 falsifies a report required under this section is  
43 subject to a civil penalty of one hundred dollars.

44 5. Any medical facility in which a physician is  
45 authorized to perform an abortion shall implement  
46 written medical policies and procedures consistent with  
47 the requirements and prohibitions of this chapter.

48 6. The department shall adopt rules to administer  
49 this section.

50 Sec. 4. NEW SECTION. 146A.3 Civil and criminal

1 **actions — penalties.**

2 1. Failure of a physician to comply with any  
3 provision of section 146A.2, with the exception of the  
4 late filing of a report or failure to submit a complete  
5 report in compliance with a court order, is grounds for  
6 license discipline under chapter 148.

7 2. A physician who intentionally or recklessly  
8 performs or attempts to perform an abortion in  
9 violation of this chapter is guilty of a class "C"  
10 felony.

11 3. A woman upon whom an abortion has been performed  
12 in violation of this chapter or the biological father  
13 may maintain an action against the physician who  
14 performed the abortion in intentional or reckless  
15 violation of this chapter for actual damages. This  
16 subsection shall not be interpreted to apply to a  
17 biological father when the pregnancy is the result of  
18 rape or incest.

19 4. A woman upon whom an abortion has been attempted  
20 in violation of this chapter may maintain an action  
21 against the physician who attempted to perform the  
22 abortion in intentional or reckless violation of this  
23 chapter for actual damages.

24 5. A cause of action for injunctive relief to  
25 prevent a physician from performing abortions may be  
26 maintained against a physician who has intentionally  
27 violated this chapter by the woman upon whom the  
28 abortion was performed or attempted to be performed,  
29 by the spouse of the woman, by a parent or guardian of  
30 the woman if the woman is less than eighteen years of  
31 age or unmarried at the time the abortion was performed  
32 or attempted to be performed, by a current or former  
33 licensed health care provider of the woman, by a county  
34 attorney with appropriate jurisdiction, or by the  
35 attorney general.

36 6. A woman upon whom an abortion was performed or  
37 was attempted to be performed shall not be subject to  
38 prosecution for a violation of this chapter.

39 7. If the plaintiff prevails in an action brought  
40 under this section, the plaintiff shall be entitled to  
41 an award for reasonable attorney fees.

42 8. If the defendant prevails in an action brought  
43 under this section and the court finds that the  
44 plaintiff's suit was frivolous and brought in bad  
45 faith, the defendant shall be entitled to an award for  
46 reasonable attorney fees.

47 9. Damages and attorney fees shall not be assessed  
48 against the woman upon whom an abortion was performed  
49 or attempted to be performed except as provided in  
50 subsection 8.

1 10. In a civil or criminal proceeding or action  
2 brought under this chapter, the court shall rule  
3 whether the anonymity of any woman upon whom an  
4 abortion has been performed or attempted shall be  
5 preserved from public disclosure if the woman does  
6 not provide consent to such disclosure. The court,  
7 upon motion or on its own motion, shall make such a  
8 ruling and, upon determining that the woman's anonymity  
9 should be preserved, shall issue orders to the parties,  
10 witnesses, and counsel and shall direct the sealing of  
11 the record and exclusion of individuals from courtrooms  
12 or hearing rooms to the extent necessary to safeguard  
13 the woman's identity from public disclosure. Each such  
14 order shall be accompanied by specific written findings  
15 explaining why the anonymity of the woman should  
16 be preserved from public disclosure, why the order  
17 is essential to that end, how the order is narrowly  
18 tailored to serve that interest, and why no reasonable  
19 less restrictive alternative exists. In the absence  
20 of written consent of the woman upon whom an abortion  
21 has been performed or attempted, anyone, other than  
22 a public official, who brings an action under this  
23 section shall do so under a pseudonym. This subsection  
24 shall not be construed to conceal the identity of the  
25 plaintiff or of witnesses from the defendant or from  
26 attorneys for the defendant.

27 Sec. 5. NEW SECTION. 146A.4 Construction.

28 Nothing in this chapter shall be construed as  
29 creating or recognizing a right to an abortion.

30 Sec. 6. NEW SECTION. 146A.5 Severability clause.

31 If any provision of this chapter or its application  
32 to any person or circumstance is held invalid,  
33 the invalidity does not affect other provisions or  
34 application of this chapter which can be given effect  
35 without the invalid provision or application, and to  
36 this end the provisions of this chapter are severable.

37 Sec. 7. EFFECTIVE UPON ENACTMENT. This Act, being  
38 deemed of immediate importance, takes effect upon  
39 enactment.>

40 2. Title page, by striking lines 1 through 4, and  
41 inserting <An Act relating to abortions, including  
42 late term abortions with certain exceptions, providing  
43 penalties, and including effective date provisions.>

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MARK CHELGREN